

**The Involvement and Responsibilities of International Financial Institutions  
in Asian Farmland Investment**

A paper prepared for the  
Asian NGO Coalition for Agrarian Reform and Rural Development

**Allard K. Lowenstein International Human Rights Clinic  
Yale Law School**

April 2011

Megan Corrarino  
Paul Linden-Retek  
Lauren Oleykowski  
Chelsea Purvis

## I. INTRODUCTION

As global population growth has been accelerating and strain on global resources has been increasing, the pressure to increase land cultivation and agricultural productivity has been correspondingly acute.<sup>1</sup> At the same time, public spending and development assistance for agriculture has declined worldwide.<sup>2</sup> Thus, in many countries, increases in agricultural productivity have not kept pace with the demand for food and other agricultural products.<sup>3</sup>

International institutions and governments of developing countries have long considered private investment to be a solution to the growing demand for food and an opportunity for investors to increase the productivity of agricultural land.<sup>4</sup> However in 2007-2008, a global food crisis dramatically spotlighted the need for greater farm productivity, as the number of malnourished people in the world jumped by at least 75 million above 2006 levels.<sup>5</sup> Since this crisis, the pace and scope of investment in agricultural land has increased tremendously. Since 2007, news reports of large-scale land acquisitions have proliferated, and civil society groups and research institutions have identified a phenomenon in which ever larger acquisitions of land are taking place in the developing world, particularly Africa and South Asia.<sup>6</sup> These acquisitions often occur without coherent oversight or policies to protect the national food security and the rights of affected communities.<sup>7</sup> According to the World Bank and several independent research institutions, sovereign wealth funds<sup>8</sup> and multinational corporations (often in partnership with domestic investors in the host country) have driven the recent surge in large-scale land acquisitions.<sup>9</sup> This trend of foreign intervention inspires concern because large-scale acquisitions often take already scarce land resources out of the hands of the very people who depend on small-scale agriculture for their survival.<sup>10</sup> Often, foreign investors acquire large pieces of

---

<sup>1</sup> KLAUS DEININGER & DEREK BYERLEE, WORLD BANK, RISING GLOBAL INTEREST IN FARMLAND: CAN IT YIELD SUSTAINABLE AND EQUITABLE BENEFITS? XXIII (2010), *available at* [http://siteresources.worldbank.org/INTARD/Resources/ESW\\_Sept7\\_final\\_final.pdf](http://siteresources.worldbank.org/INTARD/Resources/ESW_Sept7_final_final.pdf).

<sup>2</sup> ROEL R. RAVANERA & VANESSA GORRA, INTERNATIONAL LAND R, COMMERCIAL PRESSURES ON LAND IN ASIA: AN OVERVIEW 5 (JANUARY 2011), *available at* <http://www.landcoalition.org/fr/publications/commercial-pressures-land-asia-overview>.

<sup>3</sup> FAO Investment Center, <http://www.fao.org/tc/tci/whyinvestinagricultureandru/en/> (last visited Mar. 17, 2011).

<sup>4</sup> *Id.*

<sup>5</sup> Luisa Guarneri, *Raise Farm Production to End Food Crisis: FAO Director General Testifies Before Italian Parliament*, FAO NEWSROOM, Sep. 28 2008, <http://www.fao.org/newsroom/en/news/2008/1000922/index.html> (last visited Mar. 17, 2011).

<sup>6</sup> JOACHIM VON BRAUN & RUTH MEINZEN-DICK, INTERNATIONAL FOOD POLICY RESEARCH INSTITUTE, "LAND GRABBING" BY FOREIGN INVESTORS IN DEVELOPING COUNTRIES: RISKS AND OPPORTUNITIES (APRIL 2009), *available at* <http://www.ifpri.org/publication/land-grabbing-foreign-investors-developing-countries>.

<sup>7</sup> *Id.*

<sup>8</sup> A sovereign wealth fund is a state-owned investment fund composed of financial assets such as stocks, bonds, property, and other financial instruments. The funding for a sovereign wealth fund typically comes from from central bank reserves that accumulate as a result of budget and trade surpluses. These funds are then set aside for investment purposes that will benefit that state's economy and citizens.

<sup>9</sup> See MICHAEL TAYLOR & TIM BENDING, INTERNATIONAL LAND COALITION, INCREASING COMMERCIAL PRESSURE ON LAND: BUILDING A COORDINATED RESPONSE (JULY 2009), *available at* [http://filesite.landcoalition.info/sites/default/files/publication/821/09\\_07\\_cpl\\_discussionpaper.pdf](http://filesite.landcoalition.info/sites/default/files/publication/821/09_07_cpl_discussionpaper.pdf).

See also DEININGER & BYERLEE, *supra* note 1.

<sup>10</sup> VON BRAUN & MEINZEN-DICK, *supra* note 6; LORENZO COTULA, INTERNATIONAL INSTITUTE FOR ENVIRONMENT AND DEVELOPMENT, INVESTMENT CONTRACTS AND SUSTAINABLE DEVELOPMENT: HOW TO

productive agricultural land precisely in those areas where food production already drastically fails to meet local food needs. This phenomenon is occurring worldwide, including in Southeast Asia, on which this report focuses. In Southeast Asia, governments, development institutions, and civil society organizations are seeking to create responses to changing investment patterns in order to achieve local food security and meet the need for economic growth in developing countries over time. International and regional institutions, particularly the World Bank Group<sup>11</sup> and the Asian Development Bank, are also formulating responses to increase food production. Their responses, however, do not always promote the rights and needs of local communities where land acquisitions and agricultural investments are taking place. These two institutions, because of their financial resources, relationships with governments, and ability to influence national policies, can play a large role in ensuring that large-scale land acquisitions are accompanied by complementary policies that protect the right to food of local populations.

This report seeks to fill several gaps in research on global land acquisitions. First, it examines land acquisition in Asia, where, although prevalent, it is poorly understood. This report focuses primarily on land acquisition in the Philippines, Indonesia, India, Cambodia, Nepal, and Pakistan<sup>12</sup> and concludes that national governments play a major role in promoting these acquisitions. Second, this report evaluates the role of the World Bank Group and the Asian Development Bank in facilitating land acquisition. It finds that these banks promote land acquisition through policies and project financing and that human rights law and the banks' own policies obligate them to promote food security and protect human rights related to land acquisitions. Third, this report criticizes the role that the World Bank Group and Asian Development Bank play in these land acquisitions and provides a corresponding set of recommendations for the banks: The banks must ensure transparency and participation; must support small farmers and landholders; must support local and national agendas for agriculture and food security; and must adopt their own voluntary principles and best practices as enforceable policies.

## II. LAND ACQUISITION IN ASIA

This part describes land acquisition in Asia, the role that the World Bank Group and Asian Development Bank play in Asian land acquisition, and the relationship between Asian land acquisition and food security. Part A describes the scope and character of land acquisition in Asia, noting that it is prevalent and takes a variety of forms and that

---

MAKE CONTRACTS FOR FAIRER AND MORE SUSTAINABLE NATURAL RESOURCE INVESTMENTS 1 (2010) [hereinafter COTULA, INVESTMENT CONTRACTS], available at <http://pubs.iied.org/pdfs/17507IIED.pdf>; Lorenzo Cotula, *Deals Can Be Good News When Not Made Behind Closed Doors*, THE OBSERVER, Mar. 7, 2010, <http://www.guardian.co.uk/environment/2010/mar/07/africa-land-grab-food-water>.

<sup>11</sup> The World Bank Group consists of five separate legal entities: the International Bank for Reconstruction and Development (IBRD); the International Development Association (IDA); the International Finance Corporation (IFC); the Multilateral Investment Guarantee Agency (MIGA); and the International Centre for Settlement of Investment Disputes (ICSID). For our purposes, the three most relevant members of this group are the IBRD and the IDA (collectively referred to as 'the World Bank'), and then the IFC, through which the World Bank offers loans to private-sector investors who invest in developing country Member States.

<sup>12</sup> To explore land acquisition in these counties, a team from the Lowenstein International Human Rights Clinic at Yale Law School conducted extensive desk research and one week of field research in the Manila metropolitan area of the Philippines in January 2011.

governments promote it. Part B examines the role that the World Bank Group and the Asian Bank play in facilitating land acquisition in Asia, noting that their projects, policies, and advising services can undermine local food security and that the banks do not adequately involve civil society and local communities in project development and implementation. Part C describes the World Bank Group's and the Asian Development Bank's responsibilities to promote food security and other human rights related to land acquisitions. The report concludes that the banks involved in large-scale land acquisition have an obligation to promote local food security and to respect the right to food.

### A. Land Acquisition in Asia

A defining feature of increasing large-scale land acquisition is that information is difficult to obtain.<sup>13</sup> The World Bank acknowledges that “the lack of reliable information has made it difficult to understand what has been actually happening” in regard to land acquisition.<sup>14</sup> In Asia, little information from governments or investors is available to the general public about who is purchasing and leasing land, from whom, and for what purposes.<sup>15</sup> There is a “high degree of speculation [about planned acquisitions] and . . . secrecy” in land negotiations, and it is not possible to determine whether “even those [acquisitions] reported in the media . . . have actually taken place.”<sup>16</sup> The World Bank recently published a report related to this lack of information, but the report itself leaves many questions about the extent of land-acquisition and its effect on food security unanswered.<sup>17</sup> Additionally, the fact that no one has conducted a comprehensive regional survey on land acquisition in Asia<sup>18</sup> makes it difficult to determine the extent of land acquisition in the region.<sup>19</sup> ADB officials themselves have noted the need for a comprehensive regional survey on land acquisition in Asia.<sup>20</sup>

---

<sup>13</sup> TAYLOR & BENDING, *supra* note 9

<sup>14</sup> DEININGER & BYERLEE, *supra* note 1, at xiv.

<sup>15</sup> Interview with Nathaniel Don E. Marquez, Executive Director, Asian NGO Coalition (ANGOC), in Manila, Philippines (Jan. 17, 2011); Interview with Carmina Flores-Obanil, Land Reform Specialist, Focus on the Global South, in Manila, Philippines (Jan. 18, 2011); ROS-B GUZMAN, PESTICIDE ACTION NETWORK ASIA AND THE PACIFIC, *GLOBAL LAND GRABBING: ERODING FOOD SOVEREIGNTY* 14 (DEC. 2010), available at [http://www.panap.net/sites/default/files/TurningPoint\\_GlobalLandGrabbing.pdf](http://www.panap.net/sites/default/files/TurningPoint_GlobalLandGrabbing.pdf).

<sup>16</sup> GUZMAN, *supra* note 15, at 14.

<sup>17</sup> See DEININGER & BYERLEE, *supra* note 1.

<sup>18</sup> Interview with Michiko Katagami, Project Economist: Agriculture, Environment, and Natural Resources Division (ADB Roundtable), in Manila, Philippines (Jan. 20, 2011).

<sup>19</sup> International NGOs and international financial institutions have begun to try to determine the extent and character of land acquisition globally, but only one study focuses on Asia. The International Institute for Environment and Development (IIED) has worked with the Food and Agriculture Organization (FAO) and other organizations to conduct several studies on land acquisition in African countries, but it has not studied land acquisition in Asia. For a list and description of IIED studies, see LORENZO COTULA, INT'L LAND COALITION & INT'L INST. FOR ENVIR. & DEV., *THE OUTLOOK ON FARMLAND ACQUISITIONS 1* (2011) [hereinafter COTULA, OUTLOOK]. The Oakland Institute published a study on global land grabs that involved the private arm of the World Bank Group, but its case studies focused on African countries. SHEPARD DANIEL & ANURADHA MITTAL, OAKLAND INSTITUTE, *(MIS)INVESTMENT IN AGRICULTURE: THE ROLE OF THE INTERNATIONAL FINANCE CORPORATION IN GLOBAL LAND GRABS* (2010). International Land Coalition, the International Fund for Agricultural Development, and Roel Ravanera recently published *Commercial Pressures on Land In Asia: An Overview*, which explains the causes and consequences of land acquisitions in Asia. The paper is a strong basis for a future comprehensive survey of land investment in

Cambodia, Indonesia, and Pakistan are currently the principle targets for land acquisition in Asia.<sup>21</sup> Private entities, foreign governments and the governments of the countries in which affected land is located invest in agricultural land. Some countries that are “host” countries for foreign agricultural investment—Thailand and the Philippines—are also home to corporations that invest in agriculture elsewhere in Asia.<sup>22</sup> The governments of countries in which targeted land is located can play an important role in facilitating investments by corporations and foreign governments. Governments of developing countries have increasingly promoted foreign investment in their natural resources, including land.<sup>23</sup> Ros-b Guzman of the Pesticide Action Network Asia and the Pacific notes that “even in purely private investment projects, governments play a role” in facilitating investment by “by establishing framework agreements such as free trade agreements (FTAs) or bilateral investment treaties (BITs), even to the extent of changing national legislation to accommodate such.”<sup>24</sup> Governments thus play an important role in facilitating a variety of land investments in Asian countries.

Although Asian governments play an active role in facilitating investments, such investment takes the form of large-scale land *sales* less often than those that have taken place in Africa.<sup>25</sup> Governments actively seek investors to purchase large tracts of land in just a few countries, such as Cambodia, where the government owns all land, and Indonesia, which has endeavored to sell land in Papua that it claims is unoccupied.<sup>26</sup> In most of Asia, the amount of unoccupied arable land available for acquisition is quite small.<sup>27</sup> Furthermore, in most Asian countries, “well-articulated legal frameworks” prevent large-scale land acquisition.<sup>28</sup> These include domestic laws and constitutional provisions that prevent land sales to

---

Asia, but it catalogues land deals only in select Asian countries. The authors explain that they were limited by a lack of information: “While global studies abound on this new phenomenon, there is seemingly a lack of detail at the regional and even national level.” RAVANERA & GORRA, *supra* note 2, at 2.

<sup>20</sup> Interview with Michiko Katagami et al., *supra* note 18.

<sup>21</sup> But according to the Special Rapporteur on the Right to Food, “[d]eveloping countries in general ... are particularly targeted because of the perception that there is plenty of land available, because ... climate is favorable to the production of crops, because the local labour is inexpensive, and because the land is still relatively cheap.” U.N. Special Rapporteur on the Right to Food, *Large-scale land acquisitions and leases: A Set of Core Principles and Measures to Address the Human Rights Challenge*, 3 (June 11, 2009), available at <http://www2.ohchr.org/english/issues/food/docs/BriefingNotelandgrab.pdf>.

<sup>22</sup> *Id.* at 10.

<sup>23</sup> COTULA, INVESTMENT CONTRACTS, *supra* note 10, at 1. In the Philippines, for instance, the Philippines Agricultural Development and Commercial Corporation (PADCC), part of the Department of Agriculture, “match[es] investors with farmers and landowners.” Riza Bernabe, *Private Sector Agricultural Land Investments: Impacts on Small Men and Women Farmers and on Food Security*, Oxfam Great Britain (July 2010).

<sup>24</sup> COTULA, INVESTMENT CONTRACTS, *supra* note 10, at 18.

<sup>25</sup> For descriptions of land grabs in Africa, see, e.g., Alison Graham et al., *Foodfirst Info. & Action Network [FIAN], CSO Monitoring 2009-2010, Advancing African Agriculture (AAA): The Impact of Europe’s Policies and Practices on African Agriculture and Food Security: Land Grab Study* (2010), available at <http://www.fian.org/resources/documents/others/report-on-land-grabbing/pdf>.

<sup>26</sup> Interview with Michiko Katagami et al., *supra* note 18.

<sup>27</sup> U.N. Special Rapporteur on the Right to Food, *Large-scale land acquisitions and leases: A Set of Core Principles and Measures to Address the Human Rights Challenge*, *supra* note 21, at 3.

<sup>28</sup> Interview with Michiko Katagami et al., *supra* note 18.

foreigners.<sup>29</sup> As a result of these constraints, foreign investment in agricultural land tends to involve long-term leases over consolidated areas of land, contract farming, or business partnerships between foreign investors and local enterprises. According to Raul Q. Montemayor, “Many Asian governments have facilitated [long-term leasing] by entrusting ownership of large tracts of public land to certain state agencies, which in turn lease them to foreign corporations.”<sup>30</sup>

Foreign investors sometimes collaborate with local companies to form and share ownership of new domestic companies that can, under national law, purchase or lease large holdings of land.<sup>31</sup> Montemayor notes that this approach “may allow easier and trouble-free access to land, while potentially enabling the partnership to reap tax and other incentives normally enjoyed only by domestic enterprises.”<sup>32</sup> In the Philippines, for example, the Malaysian agricultural company Agromill has formed a partnership with Filipino businesses to acquire land to grow palm oil and rubber; negotiations are underway to form a Korean-Filipino partnership to acquire land to grow corn.<sup>33</sup>

Governments have begun to take actions that suggest they are seeking to reduce legal barriers to large-scale land sales. In Pakistan, for example, “a Corporate Agriculture Farming policy, intended to increase agricultural productivity and earn foreign exchange money, was conceived to allow ‘no upper ceiling on land holding,’ leaving the size of the proposed corporate farm up to the prospective investor.”<sup>34</sup> Nepal has increased the amount of land that private investors can own,<sup>35</sup> suggesting that Nepal, like Pakistan, is aiming to reduce legal barriers to large-scale land sales.

---

<sup>29</sup> Raul Q. Montemayor, *Overseas Farmland investments—boon or bane for Farmers in Asia?*, in *LAND GRAB: THE RACE FOR THE WORLD’S FARMLAND 99* (Michael Kugelman and Susan L. Levenstein, eds., 2009), available at [http://www.wilsoncenter.org/topics/pubs/ASIA\\_090629\\_Land%20Grab\\_rpt.pdf](http://www.wilsoncenter.org/topics/pubs/ASIA_090629_Land%20Grab_rpt.pdf).

<sup>30</sup> *Id.* In Cambodia, for example, the National Land Concession reportedly “owns public land and has the authority to lease or sell this land to foreigners on a long-term basis.” *Id.* In the Philippines, the National Development Company fulfills this function. *Id.* Because foreigners can lease only up to 1,000 hectares of land in the Philippines, however, foreign corporations like Dole gain the use of larger holdings by leasing consolidated holdings of Agricultural Reform beneficiaries. Interview with Ernesto Lim, People’s Campaign for Agrarian Reform, in Manila, Philippines (Jan. 17, 2011); Interview with Nathaniel Don E. Marquez, Executive Director, Asian NGO Coalition (ANGOC), in Manila, Philippines (Jan. 18, 2011). Interview with Rolando T. Dy, Executive Director, Center for Food and Agri-Business, in Manila, Philippines (Jan. 17, 2011). Other companies hire consolidators who contract with smallholder farmers to plant the same crop over all of the consolidated land. Interview with Carmina Flores-Obanil, *supra* note 15; Interview with Marriz Agbon, President, Philippine Agricultural Development and Commercial Corporation, in Manila, Philippines (Jan. 20, 2011). See also Montemayor, *supra* note 29, at 100. See also COTULA, INVESTMENT CONTRACTS, *supra* note 10, at 13 (discussing the importance of “a robust national legal framework” in preventing unsustainable natural resource investments).

<sup>31</sup> Interview with Cristino Panlilio, Undersecretary for Industry and Investments, Philippines Department of Trade and Industry’s (DTI) Board of Investments, Manila, Philippines (Jan. 17, 2011). (Discussing prohibition of more than 40% ownership by foreigners.)

<sup>32</sup> Montemayor, *supra* note 29, at 101.

<sup>33</sup> Interview with Marriz Agbon, *supra* note 30.

<sup>34</sup> RAVANERA & GORRA., *supra* note 2, at 7 (quoting Board of Investment Government of Pakistan (n.d.) “Salient Features of Investment Policy for Corporate Agriculture Farming (CAF),” available at <http://www.pakboi.gov.pk/pdf/Sectoral%20Policies/CAF%20-%20Policy%20Package.pdf>).

<sup>35</sup> *Id.* at 7.

## B. Bank Involvement

The World Bank Group and the Asian Development Bank (ADB) play a role in large-scale land acquisition in South and Southeast Asia.<sup>36</sup> The ways that the banks affect land acquisition fall into two categories: (1) actual, direct participation in the financing of land acquisition projects and projects related to agricultural development, agribusiness, and transportation/processing infrastructure development (each of which might affect the rights to food and access to land); (2) indirect effects on these rights through the banks' development guidelines and policies and their influence on practices of developing countries' governments.<sup>37</sup> Nevertheless, The full extent to which these international financial institutions are involved is difficult to determine, primarily because of limited disclosure of details concerning land acquisition financing by both banks and financing parties and the difficulty of connecting general bank policies governing investment with practical outcomes on the ground.

In its development assistance, the World Bank generally approves project financing and advises the governments of developing countries on food policy, trade, agricultural subsidies, and farm productivity.<sup>38</sup> The World Bank Group, most actively the International Finance Corporation, offers the following types of financing (often in partnership with other investors): loans and intermediary services, equity, risk management products, and sub-national finance (loans to local governments that do not require the national government's guarantee). Each of these investments is often provided in combination with World Bank advisory services.<sup>39</sup>

For example, in the Philippines, current agricultural operations of the World Bank include finance extensions to Agrarian Reform beneficiaries and limited educational financing for cooperation schemes, in addition to infrastructure funding (primarily, roads

---

<sup>36</sup> See GUZMAN, *supra* note 15.

<sup>37</sup> Both the World Bank Group and the Asian Development Bank have financing processes for public and private investments in developing countries. The public financing arms of each institution work with countries' Ministries of Finance to select and fund investments in development projects and developmental reforms. The private financing arms accept requests for funding from non-sovereign sources and select projects to fund based on funding priorities, expected returns on investments, and compliance with project standards.

<sup>38</sup> Interview with Bert Hofman, Country Director, World Bank Philippines, in Manila, Philippines (Jan. 20, 2011). See also RUMU SARKAR, *DEVELOPMENT LAW AND INTERNATIONAL FINANCE* (1999). The objectives of the IBRD are (1) assisting in the reconstruction and development of the territories of Member States by supporting the investment of capital for productive purposes; (2) promoting private foreign investment by means of guarantees or participations in loans and other investments made by private investors; (3) promoting the long-run balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment; (4) arranging loans made or guaranteed by it for the more useful and urgent projects; and (5) conducting its operations with due regard to the effect of international investment on business conditions in the territories of the Member States. International Bank for Reconstruction and Development, Articles of Agreement, 2 U.N.T.S. 13 (Dec. 27, 1945), *as amended effective* 16 February 1989, *available at* <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20049563~pagePK:43912~menuPK:58863~piPK:36602,00.html#I1>.

<sup>39</sup> See IBRD, *Toward Greater Transparency: rethinking the Bank's Disclosure Policy: Consultation Plan* (2009), *available at* [http://siteresources.worldbank.org/INFODISCLOSURE/Resources/5033530-123660024078/ConsultationPlan\\_March\\_12.pdf](http://siteresources.worldbank.org/INFODISCLOSURE/Resources/5033530-123660024078/ConsultationPlan_March_12.pdf).

and irrigation).<sup>40</sup> There the World Bank has focused on the local and municipal levels: community-driven development programs, work on cooperatives, and research on opportunities for direct government support.<sup>41</sup> In such operations, the World Bank is able to influence the content of both short- and long-term policies of host countries and to a significant degree control the pace and structure of land acquisition projects.

The Asian Development Bank (ADB), unlike the World Bank Group, is comprised of one institution that makes both public and private (non-sovereign) loans. The ADB generally provides financing for research and development and funds for rural agricultural development projects, including infrastructure (for example, roads, irrigation, and post-harvest facilities).<sup>42</sup> In addition to providing financing, the ADB can influence government policy through conditional grants/loans, direct communication with government officials, and pressure placed on host countries from fellow Member States in donor meetings.<sup>43</sup> For example, the ADB offers three types of public sector loans: project loans (approved for one specific project); sector loans (multiple projects approved at once with framework conditions), and program loans (funding allocated directly to general budget of a state based on specific compliance with certain policy conditions).<sup>44</sup> Furthermore, the ADB has various offices tasked with looking into government corruption and the use of funds, community-driven development proposals, and communication with NGOs.<sup>45</sup> All projects are formally open to the inputs of civil society organizations.<sup>46</sup>

While the public arm of the ADB has a policy of public information disclosure and a system of safeguard mechanisms,<sup>47</sup> the ADB's private arm has no such disclosure policy or accountability mechanisms.<sup>48</sup> While the ADB itself is not involved directly in land acquisition financing, it greatly influences government policies and, in particular, legislation

---

<sup>40</sup> Interview with Bert Hofman, *supra* note 38. *See also* World Bank, Operational Manual, BP 2.11 - Country Assistance Strategies (November 2010), <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPMANUAL/0,,contentMDK:20064541~menuPK:64701637~pagePK:64709096~piPK:64709108~theSitePK:502184,00.html> (describing the scope and purpose of the World Bank's Country Assistance Strategies).

<sup>41</sup> *Id.*

<sup>42</sup> Interview with Agustina Musa, Financial Due Diligence Specialist, Asian Development Bank, in Manila, Philippines (Jan. 21, 2011). *See also* ASIAN DEVELOPMENT BANK, STRATEGY 2020: THE LONG-TERM STRATEGIC FRAMEWORK OF THE ASIAN DEVELOPMENT BANK (2008), <http://www.adb.org/documents/policies/strategy2020/strategy2020.pdf>.

<sup>43</sup> *Id.*

<sup>44</sup> Interview with Kala Mulqueeny, Yale World Fellow; Senior Counsel, Asian Development Bank; Environment and Energy Lawyer; Lecturer, University of the Philippines Law College, in New Haven, CT, United States (Nov. 10, 2010).

<sup>45</sup> *Id.*

<sup>46</sup> *See* PHILDHRA, STRENGTHENING SOCIAL ACCOUNTABILITY MECHANISMS FOR FOOD SECURITY AND AGRICULTURAL DEVELOPMENT: A LOOK AT THE ASIAN DEVELOPMENT BANK (ADB) 39-42 (2010), available at [http://asiadhrra.org/wordpress/wp-content/uploads/2011/01/strengthening\\_social\\_accountability\\_mechanisms\\_for\\_food\\_security\\_and\\_agricultural\\_development.pdf](http://asiadhrra.org/wordpress/wp-content/uploads/2011/01/strengthening_social_accountability_mechanisms_for_food_security_and_agricultural_development.pdf) (describing civil society participation mechanisms); TEA SOENTORO, NGO FORUM ON ADB, HOLDING ADB ACCOUNTABLE: A LOOK AT THE PRESENT ACCOUNTABILITY MECHANISM 1-4 (2010) (describing ADB accountability mechanisms).

<sup>47</sup> Interview with Aziz Haydarov, Economist, Asian Development Bank, Manila, Philippines (Jan. 18, 2011).

<sup>48</sup> Interview with Dr. Avilash Roul, Dir. Forum on ADB, in Manila, Philippines (Jan. 18, 2011).



on and administration of land reform.<sup>49</sup> In providing technical and research assistance to governments, including help determining what land to set aside for concessions and how the land should be utilized,<sup>50</sup> the ADB exercises significant influence on governments' policies toward investment in agricultural land.

Various civil society organizations in the Southeast Asia region assert that the ADB's projects and advising services to governments negatively affect food security, human rights, and local agricultural development. PhilDHRRA, a civil society organization (CSO) in the Philippines, argues that the "ADB's policy of pushing privatization of [agricultural] services within Asia . . . has led to 'huge and continuous increases in rates [of services], much diminished access of poor households and communities to these services, the monopoly of natural resources by private businesses, massive dislocations of communities, and environmental damage.'"<sup>51</sup> The Asia Pacific Network on Food Sovereignty (APNFS) has noted that loan conditionality has "pressured the Philippine government to 'deregulate and privatize' agriculture."<sup>52</sup> The APNFS also complains that "the ADB continues to insist that the government 'give up its quantitative restrictions on rice imports', a measure that protects the farm sector."<sup>53</sup> This is an example of the ADB promoting free-trade policies over national preferences for local food production and policies that support small producers. The APNFS has also criticized ADB investments "in irrigation, flood control, and export crop promotion" for the impact they have had on Indonesia's small farmers and food security.<sup>54</sup>

While certain civil society actors praise ADB information sharing as more effective than that of the World Bank,<sup>55</sup> the mechanisms for community involvement in project selection and monitoring have been inadequate, according to Dr. Avilash Roul of Forum ADB. In particular, language and access to technology limits the availability of information for locals affected by ADB projects. The only way for locals and civil society organizations to monitor ADB projects is to "[c]heck availability of documents in the ADB website of agriculture-related projects."<sup>56</sup> But this is insufficient: Affected communities often cannot read English or do not have computers allowing them to access to the disclosure documents published online, which would inform them of the details of proposed or in-progress agribusiness and other ADB projects.<sup>57</sup> Although the ADB "stresses that all [steps in project] processes have participatory components[,] . . . there are no concrete mechanisms or steps where CSOs can provide feedback."<sup>58</sup> The ADB has recently taken steps to include CSOs in its projects,<sup>59</sup> but a 2006 ADB study of CSO involvement shows that "[although] the ADB's capacity to engage CSOs in country strategy and program processes has grown, . . . their concerns might not always be reflected effectively in [project] formulation. Moreover,

---

<sup>49</sup> *Id.*

<sup>50</sup> Interview with Michiko Katagami et al., *supra* note 18.

<sup>51</sup> PHILDHRRA, *supra* note 46, at 46.

<sup>52</sup> *Id.* at 46.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Interview with Dr. Avilash Roul, *supra* note 48.

<sup>56</sup> PHILDHRRA, *supra* note 46, at 48.

<sup>57</sup> Interview with Dr. Avilash Roul, *supra* note 48.

<sup>58</sup> PHILDHRRA, *supra* note 46, at 49.

<sup>59</sup> *Id.* at 48.

CSO involvement in areas such as policy advocacy and monitoring and evaluation is comparatively rare.”<sup>60</sup> Due to these shortcomings of information sharing and collaboration with locals and CSOs, ADB projects do not contribute as much as they could to local agricultural development and food security were they to involve smallholders more effectively in project formulation and monitoring.

### C. The Banks’ Responsibilities to Promote Food Security and Human Rights

All international financial institutions are treaty organizations with their own international legal personality and thereby with distinct obligations under international law. First, as subjects of international law, IFIs are obligated to abide by norms of customary international law.<sup>61</sup> Second, the International Bank for Reconstruction and Development became a specialized agency under Articles 57 and 63 of the United Nations Charter;<sup>62</sup> and, subsequently, the International Development Association, the International Finance Corporation, and the Multilateral Investment Guarantee Agency became specialized agencies as members of the World Bank Group. Under this specialized agency status, the WBG is under an obligation to defer to the decisions of the Security Council.<sup>63</sup>

Furthermore, from the negotiation history of the IBRD Specialized Agency Agreement, it is reasonable to conclude that the WBG’s specialized agency status binds it to conduct its operations in a manner consistent with the provisions of the UN Charter. Article 55 establishes that the goals of economic and social cooperation under the Charter are the promotion of the following:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions of international, economic, social, health, and related problems; and international cultural and educational co-operation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.<sup>64</sup>

Article 56 commits all UN member States to cooperation to achieve these goals.<sup>65</sup> Article 57 then mandates existing agencies to be “brought into relationship with the United Nations,”<sup>66</sup>

---

<sup>60</sup> *Id.* at 41.

<sup>61</sup> Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980, 89-90; *see also* Eisuke Suzuki & Suresh Nanwani, *Responsibility of International Organizations: The Accountability Mechanism of Multilateral Development Banks*, MICH. J. INT’L. L. 195 (2005); ANDREW CLAPHAM, HUMAN RIGHTS OBLIGATIONS OF NON-STATE ACTORS, 144, 158 (2006).

<sup>62</sup> Agreement between the United Nations and the International Bank for Reconstruction and Development, 16 U.N.T.S. 346, *entered into force* Nov. 15, 1947. All other regional multilateral development banks, including the ADB, are not specialized agencies.

<sup>63</sup> *Id.*, art. VI.

<sup>64</sup> Charter of the United Nations, art. 55, (Jun. 26, 1945), *available at* <http://www.un.org/en/documents/charter/index.shtml>

<sup>65</sup> *Id.*, art. 56.

under which power the Specialized Agency Agreement with the IBRD was made. Article 59 further mandates the creation of new specialized agencies “required for the accomplishment of the purposes set forth in Article 55.”<sup>67</sup> While the IBRD was a pre-existing institution that later became a specialized agency, the fact that chapter IX of the UN Charter characterizes specialized agencies as vehicles for the realization of the Article 55 goals<sup>68</sup> is nevertheless instructive as to the expectations of the IBRD’s role. Indeed, interpreted in this manner, the World Bank Group specialized agencies are under an obligation to fulfill the human rights purposes set forth in Article 55 of the UN Charter.<sup>69</sup>

Additionally, Article 103 of the UN Charter states that obligations of member States under the Charter—including human rights obligations—take precedence over other international obligations.<sup>70</sup> As the principles under Articles 55 and 56 explicitly apply to the individual and *joint* actions of member States, any collective action of member States in the context of IFIs must conform to these human rights principles, as well.<sup>71</sup> In other words, member States acting through IFIs must ensure the respect of human rights and refrain from actions that might undermine the realization of human rights. Indeed, this latter logic could be extended to the operations of the Asian Development Bank, notwithstanding the fact that it is not recognized as a UN specialized agency.

The interdependence of human rights and economic activity has long been recognized.<sup>72</sup> International farmland investment, in particular, can prevent states from protecting their populations’ abilities to fulfill their right to food.<sup>73</sup> Specifically, large-scale

---

<sup>66</sup> *Id.*, art. 57.

<sup>67</sup> *Id.*, art 59.

<sup>68</sup> *See id.*

<sup>69</sup> *See generally Vienna Declaration and Programme of Action*, UN Doc A/CONF.157/23 (12 July 1993) (confirming that the specialized-agency status of the World Bank gives rise to an expectation that it will comply with international human rights law as it evolves and contribute to the realization of human rights within its respective area of operation). *Cf.* Balakrishnana Rajagopal, *Crossing the Rubicon: Synthesizing the Soft International Law of the IMF and Human Rights*, 11 Boston Univ. Int’l L. J. 94 (1993) (reasoning that the IMF, as a UN specialized agency, has human rights obligations under Article 55 of the UN Charter).

<sup>70</sup> Charter of the United Nations, *supra* note 64, art. 103 (“In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.”).

<sup>71</sup> *See* Willem van Genugten, *Tilburg Guiding Principles on World Bank, IMF and Human Rights*, in WORLD BANK, IMF AND HUMAN RIGHTS (Willem van Genugten, Paul Hunt & Susan Matthews eds., 2003), para. 8, 247-255, available at <http://www1.umn.edu/humanrts/instree/Tilburgprinciples.html>; SIGRUN SKOGLY, THE HUMAN RIGHTS OBLIGATIONS OF THE WORLD BANK AND THE INTERNATIONAL MONETARY FUND 101 (2001). Indeed, the primacy of obligations of member States under the UN Charter was explicitly noted by the former World Bank General Counsel Ibrahim Shihata. Ibrahim Shihata, *Exclusion of Political Considerations in the Bank’s Articles—Its meaning and Scope in the Context of the Institution’s Evolution*, in THE WORLD BANK IN A CHANGING WORLD SELECTED ESSAYS AND LECTURES, VOL. II (Ibrahim Shihata ed., 1991) 76.

<sup>72</sup> Chapter IV of the United Nations Charter addresses the goals of economic development and the realization of human rights simultaneously, stressing their mutually reinforcing character. *See Charter of the United Nations* (1945), especially Arts 55-6.

<sup>73</sup> Olivier De Schutter, U.N. Special Rapporteur on the Right to Food, *Addendum to Report of the Special Rapporteur on the right to food*, Olivier De Schutter: *Large-scale Land Acquisitions and Leases: A Set of Minimum Principles and Measures to Address the Human Rights Challenge*, ¶ 3, delivered to the 13th Session of the Human Rights Council, U.N. Doc. A/HRC/13/33/add.2 (Dec. 28, 2009), available at

land acquisition can decrease food availability and price in host countries by diverting significant production for export rather than local markets, and monopolizing resources that is needed for local food production. Foreigners typically invest in land that has access to water, and the resulting large scale production often interferes with local people's supply of water for their own food production.<sup>74</sup> Furthermore, according to the Oakland Institute, acquired land is typically cultivated not for local needs but for foreign food needs or bio-fuel demand. Once, acquired for such uses, land that was previously used by smallholders<sup>75</sup> to meet local food needs will no longer provide food for local populations.<sup>76</sup>

In the context of global efforts to improve food security of poor populations, the World Bank Group and the Asian Development Bank are not merely providers of finance. Through their mission statements, they have taken on the responsibility of eliminating poverty. The World Bank Group and the ADB, respectively, have explicit missions "to help people help themselves and their environment by providing resources, sharing knowledge, building capacity, and forging partnerships in the public and private sectors"<sup>77</sup> and "to help . . . developing member countries reduce poverty and improve the quality of life of their people."<sup>78</sup> The banks' missions require that their projects and policies advance peoples' quality of life, which includes longterm sustainable access to food. For this reason, the banks must ensure that their projects increase food security.

While their missions to eliminate poverty require bank projects and policies to increase food security, the World Bank Group and the ADB have also explicitly committed to helping achieve food security. The World Bank Group pledged to work toward the Millennium Development Goals (MDGs),<sup>79</sup> and the Asian Development Bank has incorporated the MDGs as part of its Poverty Reduction Strategy and has agreed to use the

---

[http://www.srfood.org/images/stories/pdf/officialreports/20100305\\_a-hrc-13-33-add2\\_land-principles\\_en.pdf](http://www.srfood.org/images/stories/pdf/officialreports/20100305_a-hrc-13-33-add2_land-principles_en.pdf). ¶ 3. See also *Graham et al.*, *supra* note 25 (stressing the importance of recognizing the right to food in drafting policies relevant to large-scale land acquisitions). See generally FAO, VOLUNTARY GUIDELINES TO PROMOTE THE PROGRESSIVE REALIZATION OF THE RIGHT TO ADEQUATE FOOD IN THE CONTEXT OF NATIONAL FOOD SECURITY (Nov. 2004), available at <http://www.fao.org/docrep/009/y7937e/Y7937E04.htm> (emphasizing that States must take into account and promote the right to food in both domestic and international contexts).

<sup>74</sup> John Vidal, *Fears for the World's Poor Countries as the Rich Grab Land to Grow Food*, GUARDIAN.CO.UK, July 3, 2009, available at <http://www.guardian.co.uk/environment/2009/jul/03/land-grabbing-food-environment>.

<sup>75</sup> Smallholder refers to a person who owns or rents a small tract of land. In this report, we refer to smallholders who use their land for agricultural purposes.

<sup>76</sup> Oakland Institute: Shepard Daniel and Anurtha Mittal, *The Great Land Grab: Rush for World's Farmland Threatens Food Security for the Poor*, THE OAKLAND INSTITUTE, 2009, available at [http://www.oaklandinstitute.org/pdfs/LandGrab\\_final\\_web.pdf](http://www.oaklandinstitute.org/pdfs/LandGrab_final_web.pdf).

<sup>77</sup> The World Bank, Mission Statement, at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20040565~menuPK:1696892~pagePK:51123644~piPK:329829~theSitePK:29708,00.html> (last visited Mar. 16, 2011).

<sup>78</sup> Asian Development Bank, *Our Vision – An Asia and Pacific Free of Poverty*, at <http://www.adb.org/About/> (last visited Mar. 16, 2011).

<sup>79</sup> The World Bank, *The Millennium Development Goals and the Road to 2015: Building on Progress and Responding to Crisis* (2010), at 3, available at <http://issuu.com/world.bank.publications/docs/9780821385876?mode=embed&layout=http://skin.issuu.com/v/light/layout.xml&showFlipBtn=true>.

MDGs' clearly enunciated targets to measure progress on the Poverty Reduction Strategy.<sup>80</sup> By promising to help achieve the MDGs, the World Bank Group and the ADB have taken on the obligation to help eradicate extreme poverty and hunger, the first Millennium Development Goal.<sup>81</sup> Ensuring food security is a critical component of eliminating poverty and hunger.

The World Bank Group has further confirmed its obligation to “conduct its operations with due regard to the effect of international investment on business conditions in the territories of members.”<sup>82</sup> This focus on business conditions implies concern on the part of the bank for intended or unintended consequences of its operations. The World Bank Group’s definition of business conditions must include consideration of effects on local markets for food and price, particularly the ability of local farmers to participate in food production and meeting local demand. To maintain consistency with their missions, the World Bank Group and the ADB must consider broadly the effect of their projects and policies not only on the economic development of the countries in which they work, but also the overall effect on poverty reduction, hunger, and food security.

### III. CRITICISMS AND RECOMMENDATIONS

Part III of this report details several criticisms of the role the World Bank Group and the Asian Development Bank play in Asian land acquisitions. We note, first, that World Bank Group and ADB policies lack adequate measures to ensure transparency and the participation of stakeholders. We therefore recommend that the banks increase transparency and participation by providing all stakeholders with effective and meaningful access to information and by strengthening comprehensive mechanisms for civil society involvement. Second, we explain that the banks fail to emphasize human rights and small-holder empowerment in their projects and development priorities. We recommend that the banks adopt principles, policies, and practices that reflect a rights-based approach to land and food security and that the banks work with governments to strengthen infrastructure investments and programs that directly benefit small farmers and landholders. Third, we note that Bank projects frequently fail to adjust their project plans to take account of problematic regulatory environments in host countries. We recommend that bank principles, policies, and practices support local and national agendas for agriculture and food security. Finally, we explain that protections from principles and policies are incomplete, inconsistent, and poorly enforced. We recommend that the banks adopt best principles and practices as enforceable policies.

#### A. Transparency and Participation

The ADB and World Bank Group have great potential to bring about increased transparency and participation in Asian land acquisitions. They can contribute human, financial, and technical resources to domestic governments that will increase transparency in land acquisitions, and they can help NGOs and CSOs participate in decision-making about

---

<sup>80</sup> Asian Development Bank, *Enhancing the Fight Against Poverty in Asia and the Pacific: The Poverty Reduction Strategy of the Asian Development Bank* (2004), 1-2, *available at* [http://www.adb.org/Documents/Policies/Poverty\\_Reduction/2004/prs-2004.pdf](http://www.adb.org/Documents/Policies/Poverty_Reduction/2004/prs-2004.pdf).

<sup>81</sup> The World Bank, *Eradicate Extreme Poverty and Hunger by 2015*, at [http://www.worldbank.org/mdgs/poverty\\_hunger.html](http://www.worldbank.org/mdgs/poverty_hunger.html) (last visited Mar. 16, 2011).

<sup>82</sup> International Bank for Reconstruction and Development, *Articles of Agreement*, *supra* note 38, Art 1 § v.

land acquisitions. Meaningful participation would involve consultation with communities at the earliest possible stages of project development, as well as actual influence by the communities on the terms of the project. Providing for such increased transparency and participation would further the banks' own principles on disclosure and community consultation.<sup>83</sup> Despite this potential for positive influence, there are ways in which the banks are failing to meet their responsibilities.

**Criticism: ADB and the World Bank Group policies lack adequate measures to ensure transparency and stakeholder participation in**

The current framework for and implementation of financing agricultural investments creates the following problems of transparency and community participation. (1) There is little or no consolidated information about local or municipal governments' involvement in negotiating investment deals, individual deals themselves, or the overall volume of land transactions on the local and municipal levels. (2) When information is released by the banks, it is already late in the investment and development process. (3) Information is routinely provided only on bank or government websites, thus available only to those with access to the Internet. (4) As a result, civil society and community groups are routinely excluded from participating in and influencing development policy and finance decisions. Although it is appropriate, of course, to hold governments responsible for such failures of transparency and participation, bank policies often facilitate, enable, or tolerate such failures.

Public disclosure of relevant information is often minimal and few communities thus are able to effectively assess critical details of development projects. Financial information provided by the private investors who own and manage projects often simplistic, unverified by independent third parties, and not disseminated to affected populations.<sup>84</sup> Specifically, public information rarely includes reliable data on land prices and concrete commitments made by the parties to the investment deals.<sup>85</sup>

While consultation with affected populations is required by domestic legislation in many countries, these legal frameworks are often insufficient to ensure either the meaningful participation of those affected or enforceable agreements if participation does, indeed, take place. Consultations are often conducted with a clear information asymmetry between project developers and local stakeholders, who are often not informed about their legal rights, the issues the proposed projects raise, and the processes by which project details are negotiated.<sup>86</sup> Often, neither local authorities nor local farmers have access to adequate information about local resources or other technical resources that are essential for enabling stakeholders to give informed consent to any development operation.<sup>87</sup> Therefore, local populations have a severely limited ability to learn about and verify land acquisition details. Moreover, discussions with community members sometimes fail to guarantee representation

---

<sup>83</sup> See discussion *infra* at #.

<sup>84</sup> DEININGER & BYERLEE *supra* note 1, at 84. For a discussion of the need to include host communities in project development early, beginning in the negotiation stage, see U.N. Special Rapporteur on the Right to Food, *Agribusiness and the Right to Food*, Human Rights Council, at 13, U.N. Doc. A/HRC/13/33 (Dec. 22, 2009) (by Olivier De Schutter).

<sup>85</sup> DEININGER & BYERLEE *supra* note **Error! Bookmark not defined.**, at 85.

<sup>86</sup> *Id.* at 76.

<sup>87</sup> *Id.*

by all relevant community groups, and the concerns raised in community consultations are often not formally registered for reference during project design and implementation. Because of the informational and procedural shortcomings in the community consultation process, the banks' consultations often fail to provide opportunities for meaningful shareholder input.<sup>88</sup>

In April 2006, the World Bank Group's International Finance Corporation (IFC) replaced its safeguard policy system, designed to minimize harm to host communities, with a new multi-tiered system under the banner of social and environmental sustainability. The new system consists primarily of a single IFC policy outlining the IFC's responsibilities and a series of eight performance standards that are to be implemented by the client. The IFC, as part of its overall due diligence, conducts its own social and environmental review of every project proposed for financing.<sup>89</sup> The review is based on the assessment conducted by the client pursuant to the performance standards.<sup>90</sup> The IFC considers the social and environmental risks flagged in the client's assessment and determines whether it is reasonable to expect that clients can successfully manage risks.<sup>91</sup> If the IFC is not satisfied that the clients cannot meet the performance standards "over a reasonable period of time," the sustainability policy requires the IFC to refuse to finance the project.<sup>92</sup>

The sustainability policy requires the client to engage with and consult affected communities and requires the IFC to satisfy itself that projects with potential adverse effects on communities have the "broad support" of the relevant population.<sup>93</sup> Frequently, the IFC and other World Bank Group arms miscategorize the risks of harm to communities, satisfying their own internal audits but failing to ensure meaningful protections for host communities.<sup>94</sup> Furthermore, this policy requires only "consultation," not "consent," and despite efforts from civil society to create a higher standard of free, fair, and informed consent, the IFC has resisted efforts to include a "consent" requirement in a new version of the policy currently under consideration.<sup>95</sup> The sustainability policy requires the IFC, throughout the life of the project, to monitor the project's compliance with the performance standards by reviewing periodic reports submitted by the client and by conducting site visits.<sup>96</sup> The policy does not require client's reports to be made publicly available,<sup>97</sup> although it encourages the client to report publicly on performance.

The World Bank Group has noted challenges with its social and environmental safeguard policies: For example, responsible parties often do not have access to channels through which they might be able to report violations, and governments often do not abide by international standards of protections in involuntary resettlement.<sup>98</sup> When the World

---

<sup>88</sup> *Id.*

<sup>89</sup> International Finance Corporation, *Policy on Social & Environmental Sustainability* (30 April 2005) [hereinafter IFC Sustainability Policy], para. 13.

<sup>90</sup> *Id.* at para. 15.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at para. 17.

<sup>93</sup> *Id.* at paras. 19-20.

<sup>94</sup> CTR. INT'L ENVTL. L. & ACCOUNTABILITY COUNSEL, A CALL FOR REFORM OF WORLD BANK GROUP AGRIBUSINESS POLICIES AND PRACTICES 24 (2011).

<sup>95</sup> *Id.* at 23.

<sup>96</sup> IFC Sustainability Policy, *supra* note 89, at para. 26.

<sup>97</sup> Halifax Initiative, *One Step Forward, One Step Back: an Analysis of the International Finance Corporations' Sustainability Policy, Performance Standards and Disclosure Policy* (May 2006).

<sup>98</sup> Interview with Bert Hofman, *supra* note 38.

Bank Group does identify violations, affected communities often have few remedies; most often, the World Bank Group will deny the offending client credit in the future.<sup>99</sup>

The ADB cooperates with civil society organization as consultants, as partners in co-financing projects, and as project implementers.<sup>100</sup> Formally, all ADB-approved projects are open to NGO and civil society input.<sup>101</sup> Nonetheless, most mechanisms for community involvement require internet access in order to obtain information that is primarily in English; these aspects exclude many of those populations directly affected.<sup>102</sup> Furthermore, project implementation usually begins without community knowledge.<sup>103</sup> Therefore, to ensure host communities receive even minimal protections, civil society organizations must continuously monitor the ADB website, contact ADB officials, and coordinate with partner organizations. Direct community consultation—which the ADB delegates to host country governments, under ADB supervision—rarely happens.<sup>104</sup>

Moreover, once a project is completed, inefficient complaint and accountability mechanisms mean that civil society groups have great difficulty bringing complaints or seeking remedies.<sup>105</sup> Those with grievances can make use of the ADB’s accountability mechanism, but this mechanism has serious limitations. First, affected communities are not aware of how to file grievances, or they fear reprisal from their governments for doing so.<sup>106</sup> Second, the scope and eligibility period of the accountability mechanism are limited. The terms of reference of the accountability mechanism are narrow and do not cover non-material harm. The accountability mechanism will only consider complaints filed before the ADB issues a Project Completion Report. Complainants must nevertheless first attempt to resolve their complaints with the relevant ADB operations department.<sup>107</sup> Finally, there is no sanction for a project if it fails to comply with bank policies.<sup>108</sup> This situation is aggravated by the fact that communities can bring suit against only their own governments, never the ADB itself.<sup>109</sup>

**Recommendation 1: The banks must increase transparency in land acquisitions by (a) providing effective and meaningful access to information by all stakeholders and (b) publicizing the full extent of the consultation phase of any project.**

---

<sup>99</sup> *Id.* For a discussion of the need to provide direct remedies for indigenous communities – and, presumably, all host communities – that experience rights violations under World Bank projects, see CTR. INT’L ENVTL. L. & ACCOUNTABILITY COUNSEL, *supra* note 94, at 38.

<sup>100</sup> Interview with Agustina Musa, *supra* note 42.

<sup>101</sup> *Id.*; PHILDHARRA, *supra* note 46, at 48.

<sup>102</sup> Interview with Dr. Avilash Roul, *supra* note 48. *See also* PHILDHARRA, *supra* note 46, at 48 (listing internet access as the only method of public disclosure for the ADB).

<sup>103</sup> Interview with Dr. Avilash Roul, *supra* note 48. *See also* SOENTORO, *supra* note 46, at 5 (describing, as the first major barrier to filing claims or complaints on accountability issues, “misinformation or lack of information on the project affecting people, and [lack of] information on the resources available to file their grievances against the Bank”).

<sup>104</sup> Interview with Dr. Avilash Roul, *supra* note 48.

<sup>105</sup> *Id.*

<sup>106</sup> SOENTORO, *supra* note 46, at 5.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*



International financial institutions and national governments must increase transparency about land acquisitions. When proposing and conducting projects that facilitate land acquisition, both the World Bank Group and the ADB must provide stakeholders with accessible, meaningful information about these projects.<sup>110</sup> Publishing information about projects on bank websites is insufficient, as many stakeholders do not have access to information via the Internet. Banks must engage in a more cautious approach, publicizing projects locally and effectively and providing stakeholders with contact information for bank representatives in charge of the relevant projects.<sup>111</sup> The banks must also fill gaps in and reduce barriers to local community use of their accountability mechanisms. To ensure that communities can raise concerns at various stages of the project design and implementation process, the ADB should expand the eligibility period of its accountability mechanism, and it should make clear to stakeholders how they can complain about ADB projects<sup>112</sup> without fearing government censure.<sup>113</sup> Furthermore, the ADB should make public any reports it produces during the consultation phase or, at the very least, make them available to all affected parties.<sup>114</sup>

In a review of the ADB's proposed accountability mechanism, Accountability Counsel, a civil society organization that monitors development bank activities, concluded:

The ADB should make efforts to improve the information available to local communities that could be affected by ADB-assisted projects. The Bank should distribute information about its policies and procedures as well as information about the Accountability Mechanism and the complaint process in all areas where Bank-assisted projects are proposed. These materials should be distributed in full and summarized forms, with efforts to provide translations in local languages and to make the format as user-friendly as possible.

Similarly, the IFC should alter its policy “from a presumption of secrecy to a presumption of disclosure.”<sup>115</sup> The risks to large banks or corporations of losing control of their proprietary information, when they are also protected by a number of other legal mechanisms and have access to significant legal and financial resources, must be weighed

---

<sup>110</sup> See DEININGER & BYERLEE, *supra* note 1, at 119 (“There is also a need for publicity of investment details and public education. Given the barriers that a lack of information imposes on the ability to identify suitable technology, value land, and monitor performance, public access to basic information on land deals is likely to be one of the most effective ways to improve project quality, structure players’ expectations, help understand business models, and facilitate a convergence of land values to a ‘fair’ price.”).

<sup>111</sup> For a discussion of the need for a series of participatory processes and mechanisms, including an impact study conducted before project approval and shared with the host community and opportunities for host community participation beginning in the negotiation process, see U.N. Special Rapporteur on the Right to Food, *Large-scale land acquisitions and leases: A Set of Core Principles and Measures to Address the Human Rights Challenge*, *supra* note 21, at 14.

<sup>112</sup> See ACCOUNTABILITY COUNSEL, COMMENTS ON THE ASIAN DEVELOPMENT BANK ACCOUNTABILITY MECHANISM POLICY REVIEW 2 (2010).

<sup>113</sup> See SOENTORO, *supra* note 46, at 5.

<sup>114</sup> See ACCOUNTABILITY COUNSEL, *supra* note 112, at 6.

<sup>115</sup> CTR. INT’L ENVTL. L. & ACCOUNTABILITY COUNSEL, *supra* note 94, at 31.

against the vulnerability of communities without access to similar resources. The burden of effort should be on the comparatively powerful party: the IFC and other corporations or development institutions that are participants in development projects.

**Recommendation 2: The banks must increase local-stakeholder participation in land acquisition processes by (a) strengthening comprehensive mechanisms for civil society involvement, (b) implementing consultative processes and communication plans *before* approval of development projects, (c) simplifying and streamlining complaint mechanisms, (d) strengthening ombuds offices and encouraging public-private partnerships, and (e) providing technical assistance to improve mechanisms for community participation and civil-society involvement.**

The banks' project review procedures are less effective than they should be, because the primary information-gathering actor is the client and bank officials conduct minimal and infrequent site visits. The banks need to fill this information gap by involving civil society organizations. The banks need to strengthen mechanisms for guaranteeing comprehensive yet independent civil society participation. They should not only formally assure these mechanisms, but also ensure that the banks and governments at least partially finance them. The banks should set aside funding not only to review whether civil society participation has occurred, but also to enable civil society groups to have access to information and to disseminate it to local communities and to those affected.

The banks need to formulate and fully implement firm consultative processes<sup>116</sup> and joint communication plans before approval of development projects.<sup>117</sup> In particular, bank policies should require community consent, as opposed to mere consultation, and then aim to ensure that recorded community consent is actual consent of those affected and to confirm that parties to the project followed proper procedures in obtaining consent and applied no undue pressure.<sup>118</sup> The banks should simplify and streamline accountability mechanisms,<sup>119</sup> and publicize and disseminate to the relevant actors any findings that arise from these mechanisms. Furthermore, the banks should accept complaints about bank-funded projects in the regularly used language of any claimant.<sup>120</sup>

The banks should strengthen ombuds offices that independently monitor projects,

---

<sup>116</sup> Interview with Carmina Flores-Obanil, *supra* note 15.

<sup>117</sup> Interview with Dr. Avilash Roul, *supra* note 48. Dr. Roul and other civil-society representatives expressed concern that, by the time host communities are able to engage with banks, it is too late to cancel seriously damaging projects; banks are focused only on mitigating – or appearing to mitigate – the secondary harms from projects.

<sup>118</sup> See DEININGER & BYERLEE, *supra* note 1, at 76 (“To be effective, consultations must be undertaken before approval, with clear rules on who has to attend, what type of information has to be available in advance, and how outcomes are to be recorded and enforced. To improve the chances of a meaningful process and resultant benefit sharing, local stakeholders need to enter consultations with a clear understanding of their legal rights, the issues at stake, and the rules of engagement.”) See also ACCOUNTABILITY COUNSEL, *supra* note 112, at 3 (“[I]n order to facilitate access to the Accountability Mechanism, the ADB should amend its rules to allow complaints from *any individual* who is, or is likely to be, adversely affected by an ADB-assisted project.”).

<sup>119</sup> ACCOUNTABILITY COUNSEL, *supra* note 112, at 3-4.

<sup>120</sup> *Id.* at 5.

providing mechanisms by which projects can be supervised or verified by domestic actors other than the project operators. In designing these monitoring mechanisms, the banks should solicit and integrate suggestions from CSOs and government on how to, make these mechanisms more accessible to community members. To complement a formal monitoring mechanism, banks should promote partnerships among local and national governments, investors, and civil society organizations, encouraging them to share relevant information, connect farmers and local communities with potential developers, and provide technical assistance to smallholders.

Bank policy should make it a high priority to provide technical assistance for assessments of community assets and needs,<sup>121</sup> local education and training, and civil-society participation.<sup>122</sup> Local groups cannot contribute meaningfully to the development process without basic technical knowledge of what is at stake.

## **B. Development Banks Fail to Emphasize Human Rights and Smallholder Empowerment in their Development Priorities and Projects**

The people who face the greatest food insecurity today are “[s]mallholders in developing countries, cultivating small plots of land often with little or no public support,”<sup>123</sup> and bank policies often fail to empower these smallholders or to protect rights of host communities. Policymakers at the World Bank Group and the ADB should be commended for their increased commitment to smallholders’ rights and local food security.<sup>124</sup> However, without an institutional commitment to a smallholder-oriented approach to agricultural investment, it will be impossible for the banks to fully realize their mandate to promote development in the most vulnerable communities.

### **Criticism: Development banks favor commercial agriculture and agribusiness over smallholder and rights-based projects.**

An increasing body of literature finds that a rights-based approach to development can best address the needs of the poor and vulnerable, providing, among other benefits, community empowerment, better risk management capabilities, better development outcomes, and more sustainable, economic development.<sup>125</sup> Current bank approaches regularly fail to respect the rights of the most vulnerable or to promote local food security.<sup>126</sup> As a result, some civil society observers have called for the banks to suspend agricultural

---

<sup>121</sup> See generally INTERNATIONAL LAND COALITION, PARTICIPATORY MAPPING AS A TOOL FOR EMPOWERMENT (2008) (exploring the potential of participatory mapping to (1) provide community cohesion and increased capacity for collective action, (2) identify and register land rights, (3) improve land-use planning, and (4) support conflict resolution efforts).

<sup>122</sup> Interview with Carmina Flores-Obanil, *supra* note 15.

<sup>123</sup> U.N. Special Rapporteur on the Right to Food, *Agribusiness and the Right to Food*, *supra* note 84, at 11.

<sup>124</sup> See, e.g., Interview with Michiko Katagami et al., *supra* note 18 (discussing smallholder projects in Lao PDR and a river basin in the Philippines); see also Interview with Agustina Musa, *supra* note 42 (ADB proposal for a smallholder joint corporation with agribusiness investors, while potentially problematic because of emphasis on corporate agribusiness, does seek to empower smallholders as shareholders).

<sup>125</sup> See, e.g., WORLD RESOURCES INST., A ROADMAP FOR INTEGRATING HUMAN RIGHTS INTO THE WORLD BANK GROUP 3 (2010).

<sup>126</sup> See, e.g., CTR. INT’L ENVTL. L. & ACCOUNTABILITY COUNSEL, *supra* note 94.

investment until they implement a better rights framework.<sup>127</sup> Other critics recommend that the banks, particularly the IFC in the World Bank Group, permanently stop financing large-scale land acquisitions.<sup>128</sup> If projects involving large-scale land acquisitions are to continue in a manner consistent with emerging international norms on rights and development, the banks must give protection of rights greater weight in their project assessment, design, and implementation processes.

Although the World Bank Group and the ADB have recently shifted toward increased recognition of the needs of smallholder farmers, large-scale agricultural and agribusiness projects still constitute the majority of investment banks' agricultural investment portfolios.<sup>129</sup> These commercial agricultural projects frequently result in violations of environmental rights, rights of indigenous people, and economic and social rights.<sup>130</sup> Although these rights are widely recognized in bank principles and policies, by host and lending countries, and in international law,<sup>131</sup> the World Bank Group continues to expand funding for commercial agriculture.<sup>132</sup> Similarly, ADB projects reflect an underlying view that large-scale, commercial agriculture is the best solution to rural underdevelopment and food insecurity.<sup>133</sup> Meanwhile, scientific research on agricultural productivity fails to support an assumption that commercial agriculture is more efficient and productive than smallholder agriculture, and smallholder farmers feed more than two billion people worldwide.<sup>134</sup>

**Recommendation 1: Bank principles, policies, and practices should reflect a rights-based approach to food security and access to land by (a) recognizing the importance of human rights as a measure of success; (b) conforming to the highest environmental and social standards; and (c) empowering local communities.**

---

<sup>127</sup> See, e.g., *id.* at 4.

<sup>128</sup> See, e.g., GRAIN, *A Word from Grain*, in SHEPARD DANIEL AND ANURADHA MITTAL, OAKLAND INSTITUTE, (MIS)INVESTMENT IN AGRICULTURE: THE ROLE OF THE INTERNATIONAL FINANCE CORPORATION IN GLOBAL LAND GRABS 29 (2010).

<sup>129</sup> See, e.g., IFC AGRIBUSINESS, OVERVIEW, IFC'S AGRIBUSINESS PORTFOLIO BY SUBSECTOR, [http://www.ifc.org/ifcext/agribusiness.nsf/Content/Overview?OpenDocument&ExpandSection=3#\\_Section3](http://www.ifc.org/ifcext/agribusiness.nsf/Content/Overview?OpenDocument&ExpandSection=3#_Section3) (last visited Apr. 16, 2011).

<sup>130</sup> See, e.g., *id.* at 10-20; OXFAM, PRIVATE SECTOR AGRICULTURAL LAND INVESTMENTS: IMPACTS ON SMALL MEN AND WOMEN FARMERS AND ON FOOD SECURITY (2010).

<sup>131</sup> For an analysis of how the IFC's Sustainability Framework would need to be modified to be compliant with the UN Declaration on the Rights of Indigenous Peoples, see generally LEONARD A. CRIPPA & REBECCA ALEEM, COMMENTS AND RECOMMENDATIONS ON THE IFC'S PROPOSED POLICY ON SOCIAL AND ENVIRONMENTAL SUSTAINABILITY AND PERFORMANCE STANDARDS (July 2010).

<sup>132</sup> CTR. INT'L ENVTL. L. & ACCOUNTABILITY COUNSEL, *supra* note 94, at 3, n. 6. See also Interview with Aziz Haydarov, *supra* note 47 (explaining that the ADB recently authorized land-acquisition projects but only when "crucial").

<sup>133</sup> See, e.g., Interview with Aziz Haydarov, *supra* note 47 (as a matter of policy, the ADB does not emphasize smallholder agricultural projects; even when the ADB lends to smallholders, it typically does so through local governments). For an example of how banks use commercial agriculture even in nominally smallholder-oriented projects, see, e.g., Interview with Agustina Musa, *supra* note 42 (proposal on rural development for smallholders through land consolidation and cooperation with foreign agribusiness companies).

<sup>134</sup> INT'L FUND FOR AGRIC. DEV., THE FUTURE OF WORLD FOOD SECURITY: INVESTING IN SMALLHOLDER AGRICULTURE – AN INTERNATIONAL PRIORITY (2010), available at [http://www.ifad.org/pub/factsheet/food/foodsecurity\\_e.pdf](http://www.ifad.org/pub/factsheet/food/foodsecurity_e.pdf).

Many of the banks' existing programs benefit or have the potential to benefit smallholders. For example, the ADB "support[s] agriculture and rural development through infrastructure . . . , irrigation and water systems, and microfinance," all inputs that could significantly benefit smallholders.<sup>135</sup> However, because the ADB does not have an explicit policy to direct these resources to smallholders, there is no guarantee they will actually achieve such benefit. Similarly, although an increasing number of individual policymakers at the World Bank Group and other development institutions are beginning to advocate a smallholder-based approach to agricultural investment, the major development banks themselves have failed to formally adopt pro-smallholder policies. To ensure that banks effectively promote access to food in the most vulnerable communities, the banks should redesign official principles, policies, and practices to protect and promote the rights of smallholders, indigenous people, the poor, and other vulnerable groups.<sup>136</sup>

Specifically, bank policies should protect the human rights of host community members, including the right to food, are as important as economic indicators and other currently used measures of development-project success. Such an approach would require banks not only to pay lip service to human rights, but to actually evaluate projects' effectiveness in advancing rights such as the rights to access to food and to livelihood. Furthermore, banks should require all projects to comply with the highest international norms of environmental and social protection and the rights of indigenous people. Currently, banks frequently resist civil-society efforts to adopt higher standards of social and environmental protection, suggesting the banks see the protections more as window-dressing, rather than as mechanisms to ensure real social and environmental sustainability. Finally, banks should make a real commitment to protecting the human rights of host-community members; one way to improve human rights protections is to carry out projects that incorporate meaningful input from host communities and civil society.<sup>137</sup>

**Recommendation 2: The Asian Development Bank and World Bank should work with governments to strengthen projects that *directly* benefit small-scale farmers and landholders, including: (a) technical training and assistance, (b) access to improved inputs, and (c) access to financial services.**

Meeting the growing food needs of developing countries and the world as a whole requires a combination of approaches. Investment in large-scale agriculture and agribusiness is only one method of increasing land productivity and the availability of food. Another important but elusive method of increasing land productivity is by providing assistance

---

<sup>135</sup> ASIAN DEVELOPMENT BANK, STRATEGY 2020: THE LONG-TERM STRATEGIC FRAMEWORK OF THE ASIAN DEVELOPMENT BANK, *supra* note 42, at 16.

<sup>136</sup> See DEININGER & BYERLEE, *supra* note **Error! Bookmark not defined.**, at 140-1 (citing the need for an "evidence-based multi-stakeholder approach" to the financing and execution of land acquisition).

<sup>137</sup> For an excellent and comprehensive proposal of how such a rights-based framework might look, see KIRK HERBERTSON, KIM THOMPSON & ROBERT GOODLAND, A ROADMAP FOR INTEGRATING HUMAN RIGHTS INTO THE WORLD BANK GROUP (2010), available at <http://www.wri.org/publication/roadmap-for-integrating-human-rights-into-world-bank-group>. For one model of "pro-poor" investment strategies that are generally considered more effective than those of the major banks, see ORG. ECON. CO-OP. & DEV., PROMOTING PRO-POOR GROWTH: AGRICULTURE (2006).

directly to small producers to increase their output and their incomes.<sup>138</sup> Agribusiness investments, including for infrastructure such as irrigation and farm-to-market assistance such as roads, are important. However, to truly benefit smallholders and contribute to local food security rather than primarily benefit corporate producers, they must be accompanied by assistance provided directly to individual smallholders. There are several types of projects by which global and regional financing institutions can help meet this goal:<sup>139</sup> technological assistance and training, improved inputs, and financial services.

The banks can work with governments and NGOs to provide host governments and communities with much-needed technological assistance and training. The types of training and assistance needed will vary regionally, ranging from improved agricultural techniques to climate-change adaptation.<sup>140</sup> Where national Departments of Agriculture can partner with NGOs to provide tailored training, the World Bank and the ADB should work to support such programs with loans and grants. Banks should provide grants or other resources to ensure that such projects are supported by research on techniques proven to increase smallholder production.

The banks can work with governments to increase the availability of improved materials for small producers. The availability of effective fertilizers, seeds, and pesticides should not be limited to large-scale producers. However, government assistance may be necessary to make these agricultural supplies available to small farmers, both because the price may be prohibitive and because farmers may otherwise lack access to markets.<sup>141</sup> The banks should work with governments to institute systems through which fertilizers, pesticides, and improved seeds are affordable and available to small producers in small orders. This may involve cooperating with NGOs to create regional purchasing boards which can consolidate the low-volume orders of many smallholders but still obtain wholesale prices, perhaps with the help of government or bank subsidization. Where such partnerships and programs are possible, the World Bank and the ADB should provide loan and grant support to small farmers.

Small-scale farming is an extremely risky enterprise, highly vulnerable to market and environmental shocks. Small-scale producers are much less able than larger-scale producers to withstand shocks and they need specialized services to survive shocks and remain

---

<sup>138</sup> See INTERNATIONAL LAND COALITION, LINKS BETWEEN LAND TENURE SECURITY AND FOOD SECURITY 15 (citing reports that small-holder agriculture is the most productive method of agriculture in developing economies).

<sup>139</sup> See, e.g., ROSSELYNN JAYE G. DE LA CRUZ, AR NOW!, THE NEW CONQUISTADORES AND ONE VERY WILLING COLONY: A DISCUSSION ON GLOBAL LAND GRABBING AND THE PHILIPPINE EXPERIENCE 18 (2010) (proposing to “[i]ncrease farmer resilience to the temptation of leasing out their lands by strictly regulating agricultural importations and by increasing public investments in the agricultural sector.”)

<sup>140</sup> SOPHIA MURPHY, CHANGING PERSPECTIVES: SMALL-SCALE FARMERS, MARKETS, AND GLOBALIZATION, HIVOS KNOWLEDGE PROGRAM 29-39 (2010), available at <http://www.hivos.net/Hivos-Knowledge-Programme/Themes/Knowledge-Change-Dialogue/News/Changing-Perspectives-Small-scale-farmers-markets-and-globalization>.

<sup>141</sup> *Statement of the President at the New Directions for Smallholder Agriculture Conference*, INT’L FUND FOR AGRIC. DEV. (Jan. 24, 2011), <http://www.ifad.org/events/op/2011/smallholders.htm>.

profitable.<sup>142</sup> The banks should work with governments to provide financial services, including specialized savings products, affordable credit, and affordable insurance, to small-scale producers. Access to such services allow smallholders to moderate their finances across abundant and lean years and to remain solvent through disasters. Such services require government assistance because of the prohibitive cost to providers of financial services in remote areas with clients who have a high volume of low value transactions. Where government can provide, or work with NGOs or the private sector to provide, such services, the World Bank and the ADB should support these programs with loans and grants. By providing financial services, banks can help small-scale farmers weather the ups and downs of a volatile marketplace.

### C. Host-Country Good Governance

Although bank-led development projects have the potential to enhance the capacities of host governments and lay the groundwork for long-term domestic development, many agricultural investment projects do not provide sufficient support for the development of host-country institutions and capacities.

**Criticism: Bank projects frequently rely on host governments to regulate, implement, monitor, and assess agricultural-investment projects but fail to provide sufficient support for governments to meet these obligations fully and effectively.**

Many World Bank Group and ADB projects provide important support for development projects. But frequently, bank projects also interact with host-country governments in one of three troubling ways. They promote agribusiness projects and facilitate investment without first understanding the nature of land acquisition in host countries; rely on insufficient domestic regulatory infrastructure for enforcing rights; and lay the groundwork for pro-land-acquisition policies in host countries.

First, banks engage in agricultural investment projects without a complete picture of trends in agricultural investment and land acquisition in host countries. There is a scarcity of information on land acquisition in many Asian host countries and in the region as a whole. National governments may lack the capacity to record private land transfers.<sup>143</sup> Even where they have the capacity, they may be reluctant to share information, particularly where there is no public right to information.<sup>144</sup> National governments are often unaware of how much

---

<sup>142</sup> LORENZO COTULA & REBECA LEONARD, INST. FOR INT'L ENVIR. & DEV. ET AL., ALTERNATIVES TO LAND ACQUISITIONS: AGRICULTURAL INVESTMENT AND COLLABORATIVE BUSINESS MODELS 37-47 (2010), available at <http://pubs.iied.org/pdfs/12567IIED.pdf?>

<sup>143</sup> Interview with Michiko Katagami et al., *supra* note 18. See also Interview with Marriz Agbon, *supra* note 30; Interview with Cristino Panlilio, *supra* note 31 (government of the Philippines tracks only those projects that enter through one of the national-level agencies or tax-incentive programs, but many companies also work directly with local governments or private investors, which does not require reporting to the national government).

<sup>144</sup> TAYLOR & BENDING, *supra* note 9, at 2 (2011) (“many of the large-scale land transactions [in Asia] are allegedly not transparent and . . . investment reports are often late and are not easily accessible to the public”). See also Interview with Dr. Avilash Roul, *supra* note 48. In India, the Right to Information Act is a “far-reaching law granting [Indians] the right to demand almost any information from the government.” Lydia Polgreen, *Right-to-Know Law Gives India's Poor a Lever*, N.Y. TIMES, June 28, 2010, at A1,

land has been sold or leased at local levels—and local land transfers can make up a significant percentage of total land investment in a country. In the Philippines, for example, municipal governments negotiate most investments at the local level, helping foreign investors lease contiguous plots of land owned by small farmers.<sup>145</sup>

Second, banks currently fund some projects that rely on host-country cooperation for full realization of project implementation, monitoring, and compliance. Host countries often play important roles in all stages of bank-funded projects; among other responsibilities, they may be in charge of community consultation processes, distribution of project funds, and project monitoring. Yet development banks often delegate these responsibilities to host governments without ensuring that the host countries have a sufficiently strong, non-corrupt, and transparent regulatory mechanisms.<sup>146</sup> Because many of the host community protections – such as a strong community consultation process and oversight of fund distribution – rely on host-government involvement, a weak regulatory framework in the host country makes it difficult to fully implement those protections, leaving host communities without functioning mechanisms by which to participate in the project development process or monitor project implementation and compliance with bank policies.<sup>147</sup>

Third, some bank policies and projects directly or indirectly influence national or local governments to act in ways that are inconsistent with local needs or the rights of vulnerable populations. Some civil-society observers argue that bank activities tend to make host countries more vulnerable to land acquisition by emphasizing the creation of transferable and alienable property rights over more community-based frameworks for land ownership. For example, the International Land Coalition argues that the banks have been active in assisting the governments of Bangladesh and India purchase land from their own

---

available at <http://www.nytimes.com/2010/06/29/world/asia/29india.html>. This Act, however, is unique in the region, and most other countries surveyed do not have similarly straightforward mechanisms, even for access to government information. In the Philippines, for example, where there is no right to information, the Department of Agriculture is willing to share a list of investments organized by the Philippines Agricultural Development and Commercial Corporation (PADCC) only with potential foreign investors—not with domestic NGOs. It costs \$100 to purchase PADCC’s list of available agricultural land—much more money than most NGOs are able to pay. Interview with Carmina Flores-Obanil, *supra* note 15. When asked where researchers could find a list of current or pending land acquisitions in the Philippines, Marris Agbon, President of PADCC, said that he hoped his organization would be able to put a list of investments on the PADCC website. Interview with Marris Agbon, *supra* note 30.

<sup>145</sup> Interview with Ernesto Lim, *supra* note 30.

<sup>146</sup> The ADB and the World Bank regularly rely on host governments to ensure host community approval of many ADB-funded projects. OXFAM, *supra* note 130. Yet host governments frequently fail to provide notice and comment processes, either because they lack the capacity to do so or because they have already decided to push through project approval. Interview with Dr. Avilash Roul, *supra* note 48. *See also* Interview with Michiko Katagami et al., *supra* note 18 (proposing greater involvement from civil society to cover gaps between Asian countries’ strong regulatory frameworks and generally poor enforcement mechanisms).

<sup>147</sup> In the Philippines, for example, even government officials who support foreign agricultural investment say it is difficult for the national government to monitor that investment because local governments can invite foreign investment directly. *See, e.g.*, Interview with Cristino Panlilio, *supra* note 31; Interview with Marris Agbon, *supra* note 30. Lack of monitoring leads to substantive rights violations; for example, Philippine law prohibits the use of irrigated or irrigable land in biofuel cultivation, but this is generally ignored. OXFAM, *supra* note 130.



private property-owners, often smallholders. Although smallholders receive a one-time payment, these land deals leave them without long-term livelihoods. In the long run, such programs leave more of the rural poor even more vulnerable, as many return to work the same land as wage workers who earn less and whose jobs are insecure; others become highly vulnerable migrants to urban areas.<sup>148</sup> By exerting pressure on host governments to engage in development projects that emphasize land acquisition and large-scale agricultural production, development banks often increase the vulnerability of smallholders.

**Recommendation 1: The World Bank and Asian Development Bank must take the lead in understanding the extent of land acquisition in Asia by (a) conducting a regional study and (b) assisting national governments in monitoring and reporting on land acquisition.**

The World Bank and ADB could significantly increase transparency in global land acquisitions simply by conducting a comprehensive survey on the scope and character of land acquisition in Asia. The Food and Agricultural Organization collaborated with the International Institute for Environment and Development (IIED) to create a valuable report on land acquisition in Africa<sup>149</sup>. The World Bank or ADB could similarly work with an international NGO to produce the first comprehensive report on Asian land acquisition. This survey would provide the Asian public with much-needed information about who controls its land and how its land is being used. Banks should provide maps and lists of investments that result from this survey to NGOs and CSOs at no cost.

The World Bank and ADB should also assist national governments in determining the extent of land acquisition that has taken place in each country. The ADB has already begun to engage in this effort, collaborating with the government of Laos to determine the extent of land acquisition there.<sup>150</sup> The ADB is conducting a “concession inventory,” determining how much of the land of Laos has been sold or leased to foreigners.<sup>151</sup>

National governments of target countries also need assistance developing land-use policies.<sup>152</sup> The ADB and World Bank should assist the Asian governments in surveying all land nationally, identifying socially and environmentally significant land, and creating sustainable land-use policies. The ADB is helping the government of Laos develop its land-use policy: It is conducting a land survey to determine which areas of land are appropriate

---

<sup>148</sup> Interview with Seema Gaikwad, Asia Regional Node Coordinator, International Land Coalition, in Manila, Philippines (Jan. 19, 2011). Similarly, some World Bank projects, such as land titling schemes in Lao PDR and elsewhere, were explicitly designed to attract foreign investment in agriculture and agribusiness. These projects often undermine existing community land-holding arrangements that provide long-term food and livelihood security to smallholders. See, e.g., LYNN HOLSTEIN, TOWARD BEST PRACTICE FROM WORLD BANK EXPERIENCE IN LAND TITLING AND REGISTRATION (1996), available at [www.landnetamericas.org/docs/World%20Bank%20Experience.pdf](http://www.landnetamericas.org/docs/World%20Bank%20Experience.pdf).

<sup>149</sup> See COTULA, OUTLOOK, *supra* note 19.

<sup>150</sup> Interview with Michiko Katagami et al., *supra* note 18.

<sup>151</sup> *Id.*

<sup>152</sup> RAVANERA & GORRA., *supra* note 2, at 40. See also ROSSELYNN JAYE G. DE LA CRUZ, AR NOW!, THE NEW CONQUISTADORES AND ONE VERY WILLING COLONY: A DISCUSSION ON GLOBAL LAND GRABBING AND THE PHILIPPINE EXPERIENCE 17-18 (2010) (proposing, among other things, the enactment of a law or executive policy that would establish a national regulatory mechanism for all investments involving the lease of agricultural lands to foreign investors).

for investment and which areas—for social and environmental reasons—are not.<sup>153</sup> By enabling the government to make informed decisions about which land to set aside for preservation and which land to open for investment, this survey will help the government develop its land-use policy.<sup>154</sup>

The World Bank and ADB should assist national governments in strengthening land-administration programs.<sup>155</sup> The banks should encourage government agencies that manage agricultural land acquisition to include in their policies “appropriate consultations with local communities and full consideration of their concerns, strong accountability measures for those enforcing the laws, and the establishment of dispute resolution mechanisms that encourage participation and transparency.”<sup>156</sup> The banks should also provide governments with technical assistance in land-administration programs. For example, the government of the Philippines is engaged in an agency “convergence” project, in which the governments’ three agricultural agencies will begin working more closely together. The coordination of agricultural agencies will allow the national government to better monitor land transactions at local levels.<sup>157</sup> The banks should assist the government of the Philippines in carrying out this project, thereby strengthening the Philippines’ land administration program. The banks should encourage other countries to undertake similar land administration reforms.

**Recommendation 2: The banks’ principles, policies, and practices should support food security by (a) working with host governments to develop effective regulatory frameworks, and (b) ensuring that bank-supported development projects do not lay the groundwork for future land grabs.**

The World Bank and the ADB frequently cooperate closely with national and local host governments on agricultural investment projects. The banks often help to develop good-governance and project monitoring programs to support host governments, and they should continue to do so.<sup>158</sup> In addition, the banks (particularly the ADB, with its strong regional expertise) are well placed to help host countries develop policies that will prevent future vulnerability to foreign land acquisition.

The World Bank and the ADB should work with host-country governments to develop good-governance programs for national and local governments responsible for overseeing bank projects.<sup>159</sup> The banks should ensure that their projects support local and

---

<sup>153</sup> Interview with Michiko Katagami et al., *supra* note 18.

<sup>154</sup> *Id.*

<sup>155</sup> RAVANERA & GORRA., *supra* note 2, at 40.

<sup>156</sup> *Id.*

<sup>157</sup> Interview with Jing Pacturan, Minister, Dept. of Agrarian Reform (Philippines), in Manila, Philippines (Jan. 20, 2011).

<sup>158</sup> ADB officials are aware of this need and are already engaging with some governments (e.g., in Lao PDR) to comprehensively survey land acquisition. *See, e.g.*, Interview with Michiko Katagami et al., *supra* note 18. As ADB officials themselves indicated, this should be a more widespread practice, and other governments, such as the Filipino government, have indicated interest in similar support from the ADB.

<sup>159</sup> In addition to the food security benefits described in this paper, development of good governance and host country capacities is consistent with the banks’ primary mission of promoting economic development. The ADB’s current Strategy 2020, for example, recognizes that good governance and capacity development are “key drivers of change” in underdeveloped countries. ASIAN DEVELOPMENT BANK, STRATEGY 2020 14 (2008), *supra* note 42.

national agendas for agriculture and food security, including agendas for the long-term development of host-country project management capacities, so long as those agendas respect the rights of host communities. When host-country regulatory structures are insufficient to protect host-community rights, the banks must work with governments to develop regulatory capacities over the long term while also providing independent monitoring and enforcement mechanisms to ensure that host-community rights are protected in the short term. Finally, the banks must ensure that their support for projects does not overly emphasize privatization or alienability of title, without respecting community interests in long-term access to farmland. Doing so could lay the groundwork for future unchecked land acquisition or consolidation.

#### D. Convert Good Principles into Enforceable Policies

**Criticism: The guarantees of transparency, participation, and small-holder empowerment that the banks' principles and policies afford are incomplete, inconsistent, and poorly enforced.**

A complex patchwork of principles and policies govern World Bank Group and ADB projects. However, these principles and policies incompletely reflect international human rights norms<sup>160</sup> and often fail to effectively protect the rights of vulnerable people.<sup>161</sup> Furthermore, the complexity and variety of these frameworks make it difficult for even high-level bank officials to be aware of the latest developments in bank policies.<sup>162</sup> This suggests it would be almost impossible for affected populations to have a complete picture of their rights of remedies under bank policies.<sup>163</sup> Finally, although the World Bank recently

---

<sup>160</sup> This has been perhaps most widely documented with respect to involuntary resettlement, where the IFC funds projects that force resettlement so long as certain safeguards are met. See INT'L FINANCE CORP., IFC PERFORMANCE STANDARDS ON SOCIAL AND ENVIRONMENTAL SUSTAINABILITY (2006). For one of many critiques, see CRIPPA & ALEEM, *supra* note 131.

<sup>161</sup> For example, although the banks have mechanisms by which host communities can bring complaints to about projects, these are often highly bureaucratic, happen too late in the project development process, and take up to six years to reach decisions – time in which projects might be proceeding. These mechanisms are not properly designed to maximize community participation, given host communities' level of resources, sophistication, and need for immediate access to subsistence agriculture and consequently fail to provide a meaningful forum in which host communities can seek remedies for rights violations. OXFAM, *supra* note 130. The inefficacy of redressal mechanisms is a widespread complaint from civil society. See, e.g., Interview with Dr. Avilash Roul, *supra* note 48 (civil society must advocate strongly and on an ongoing basis for complaint mechanisms to actually work); see also *ABD Safeguard Policy Update*, INTERNATIONAL ACCOUNTABILITY PROJECT, <http://www.accountabilityproject.org/article.php?list=type&type=40> (last visited Feb. 13, 2011) (expressing concern about a global “race to the bottom” in the development of bank accountability mechanisms).

<sup>162</sup> Interview with Bert Hofman, *supra* note 38.

<sup>163</sup> The banks rely on civil society to help host communities know about and realize their rights, leading to incomplete monitoring and coverage of host communities and, often, now power for individuals or communities to engage directly with rights violators unless civil society advocates on their behalf. See, e.g., Interview with Dr. Avilash Roul, *supra* note 48 (almost all submissions to the ADB's compliance officer go through civil society); Interview with Agustina Musa, *supra* note 42 (ADB relies on civil society to monitor and report rights violations; people interested in information about projects in development can obtain it on the bank's website).

developed a set of principles to govern land-acquisition projects, as principles, they will not be binding unless they become bank policy.<sup>164</sup>

**Recommendation: The banks should adopt policies and practices that incorporate a rights-based approach and are enforceable. creating meaningful safeguards by (a) identifying best policies and practices under the rights-based approach outlined above and (b) adopting best practices as enforceable policies.**

The banks should identify and implement policies necessary to support a rights-based approach to agricultural investment. Once policies to protect host-community rights are identified, the World Bank Group and the ADB should provide a document that catalogues all of the protections, rights, and remedies related to agricultural projects. The banks must ensure that information on bank policies is widely accessible, particularly to civil society and to members of host communities who may have limited literacy and access to technology. The banks must also ensure that human rights protections are part of enforceable, guiding policies, not just non-binding principles, and that bank staff and host-country officials are well informed about them.

## V. CONCLUSION

The World Bank Group and the ADB play a critical role in agricultural investment practices in Asia. They help to design and fund joint ventures with private investors, and they work with host governments to identify, implement, and monitor investment projects in some of the region's most vulnerable agricultural communities. Despite their enormous power, however, and their mandate to promote development and reduce poverty, the banks have failed to identify and implement meaningful safeguards to protect the rights of the poorest and most vulnerable communities. Consequently, bank practices in Asian agriculture entail a significant risk of increasing, rather than ameliorating, the problems of food insecurity and hunger.

To fully realize their mandate of promoting development and reducing poverty, the banks must identify and implement principles and policies that increase transparency and community participation in land-acquisition processes, respect the rights of smallholders, and support the development of good governance in host countries. Finally, the banks must ensure that their policies are enforceable, supported by effective monitoring and enforcement mechanisms, and fully integrated into the institutional culture of the banks.

---

<sup>164</sup> Interview with Bert Hofman, supra note 38.